Supreme Court, U.S.
FILED

No. 09-374 SEP 21 2009

OFFICE OF THE CLERK
William K. Suter, Clerk

In The

SUPREME COURT OF THE UNITED STATES

PETER HOFFMAN
Petitioner,

Vs.

UNITED AIRLINES
Respondent,

On Petition for Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Laurie M. Fowles, Esq.
Counsel for Petitioner
4 Cottage Street
Medway, MA 02053
(508) 572-0475
Fax (508) 533-4421
Email: lmfowles@aol.com

QUESTION PRESENTED FOR REVIEW

Whether the lower courts reasoning that Petitioner's conduct in the Bankruptcy Court was not "excusable neglect" under Bankruptcy Rule 9006 or Bankruptcy Rule 9024 directly conflicts with this Court's holding in Pioneer Investment Service Co. v. Brunswick Assoc. Ltd. Partnership.

TABLE OF CONTENTS

QUESTION PRESENTED. i

TABLE OF CONTENTS. ii

TABLE OF AUTHORITIES. iii

OPINIONS BELOW. 1

JURISDICTION. 2

STATUTES AND RULES AT ISSUE. 5

STATEMENT OF THE CASE. 8

REASONS WHY CERTIORARI SHOULD BE GRANTED. 13

CONCLUSION. 20

TABLE OF AUTHORITIES

CASES

Pioneer Investment Service Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993) 12, 13, 16

STATUTES & COURT RULES

Bankruptcy Rule 9006. . . . . .15, 17

Bankruptcy Rule 9024. . . . . .18, 20

Federal Rule of Civil Procedure 60(b). 18, 19

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, filed on March 31, 2009. This opinion is reprinted in the Appendix pp. A1-A7.

The order of the Seventh Circuit denying rehearing, filed April 29, 2009 is reprinted in the Appendix p. A8.

The opinion of the United States District Court for the Northern District of Illinois denying petitioner's appeal of the decision of the United States Bankruptcy Court, dated September 11, 2008, is reprinted in the Appendix pp. A9-A14.

Transcript of hearing on November 6, 2007 in the United States Bankruptcy Court for the Northern District of Illinois is reprinted in the Appendix pp. A15-A19.

The decision of the United States Bankruptcy Court for the Northern District of Illinois, denying petitioner's motion to file appeal late, dated September 11, 2007, is reprinted in the Appendix p. A20.

Transcript from the United States Bankruptcy Court for the Northern District of Illinois dismissing petitioner's Bankruptcy Claim against United Airlines, read into the record on June 28, 2007 and Order of same date, is reprinted in the Appendix pp. A21-A26.

JURISDICTION

On October 21, 1999, Petitioner brought suit in New York State Court against United Airlines for breach of contract. Respondent then removed the case to the United States District Court for the Southern District of New

York. Petitioner's case against United was pending in District Court when United filed for Bankruptcy on December 9, 2002.

Petitioner's case was transferred to the United States Bankruptcy Court for the Northern District of Illinois on February 6, 2003. Respondent then filed a Motion to Dismiss the Petitioner's Bankruptcy Claim in an omnibus motion, which was allowed by Judge Wedoff via a decision read into the record on June 28, 2007.

Petitioner then filed a Motion for Extension of Time to Appeal, which was denied by Judge Hollis on September 11, 2007. Petition then filed a Motion for Reconsideration on September 18, 2007, which was denied by Judge Darrah on November 7, 2007.

Petitioner appealed these decisions to the United States District Court for the Northern District of Illinois. On September 11, 2008, the District Court denied Petitioner's appeal.

Petitioner then appealed this decision to the United States District Court for the Seventh Circuit, which denied the Petitioner's appeal on March 31, 2009. Petitioner's petition for rehearing was denied on April 29, 2009. The Court granted Petitioner (pro se) Motion to File Certiorari Late on July 23, 2009.

Jurisdiction to review the Judgment of the Seventh Circuit is invoked by Bankruptcy Rule 60 and 9006 and Fed.R.App.P. 6.

STATUTES AND RULES AT ISSUE

Bankruptcy Rule 9006(b)(1): Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Bankruptcy Rule 9024: Rule 60 F.R.Civ.P. applies in cases under the Code except that (1)

a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by §1144, § 1230, or § 1330.

Federal Rules of Civil Procedure 60(b): On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable

diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

STATEMENT OF THE CASE

A. Facts Giving Rise to this Case

Petitioner was hired as a Station Operations Representative at United Airlines on June 15, 1992 with the understanding that Petitioner was to be transferred to the Pilot Corps. Just before the six-month probationary period was to expire, Petitioner was informed that he would be asked to remain for an additional period of time in a probationary status. Petitioner declined. In lieu of any further disagreement, Bob Caferio (Management and Petioner's supervisor) and Petitioner agreed that he would complete the necessary paperwork to transfer Petitioner to the Pilot Corps.

Mr. Caferio then initiated, completed and submitted a transfer request to the Pilot

Corps. The request apparently sat in process for some time until Petitioner inquired about the transfer request (CTR). Petitioner then confronted Mr. Cafiero and received the CTR document from him. United never sent a decision regarding the CTR request.

Petitioner then filed a claim against United for breach of contract in New York State Court.

B. The State Court and Southern District of New York Proceedings

On October 21, 1999, Petitioner Peter Hoffman filed a complaint in New York State Supreme Court alleging that United Airlines breached its contract to hire Petitioner as an airline pilot. United Airlines then successfully removed the case to the United States District Court for the Southern District of New York.

Petitioner was deposed in the matter in New York on March 29, 2000. Petitioner later (July 2000) then proceeded with the case pro se. While the case was pending in the District Court, United Airlines filed for Chapter 11 bankruptcy on December 9, 2002.

C. The Bankruptcy Court Proceedings

On February 6, 2003, Petitioner filed a Proof of Claim against Respondent. On January 30, 2007, United moved to dismiss Petitioner's claim in an omnibus motion. On March 10, 2007, Petitioner opposed the motion stating that there were material facts in dispute, namely there was a dispute as to whether an agreement existed between United and the Petitioner as well as whether the Petitioner was qualified to be hired by United as a pilot. On April 2, 2007, United then filed a

reply in opposition to Petitioner's objection, stating that, among other things, that neither under breach of contract law or under promissory estoppel, Petitioner was not entitled to any legal relief. On June 28, 2007, the court dismissed the Petitioner's claim. Petitioner did not receive initial notice of this decision until the after the ten day appeal period lapsed. Petitioner filed a Motion for Reconsider the dismissal of claim on June 12, 2007. The Court (J. Wedoff) denied the Motion on July 31, 2007.

D. The District Court Proceedings

Petitioner appealed the decision to deny the motion for reconsideration to the United States District Court for the Northern District of Illinois, Eastern Division. On September 11, 2008, District Judge John Darrah issued a

Memorandum and Order denying the appeal on the basis that: (1) the Bankruptcy court did not abuse its' discretion in denying the appeal on the grounds of "excusable neglect" and (2) Petitioner did not raise this issue in the proceedings below.

E. The Seventh Circuit Proceedings

Petitioner appealed the decision of the Northern District of Illinois to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit issued a decision on March 31, 2009, stating that Petitioner did not meet the standards of "excusable neglect" as set forth by this Court in Pioneer Investment Service Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993).

A petition for rehearing was denied on April 29, 2009.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

Review Is Warranted Because the Lower Court's Holding Directly Conflicts with This Court's Holding in Pioneer Investment Service Co. v. Brunswick Assoc. Ltd. Partnership.

Clearly the lower courts have not considered Petitioner's argument that failure to timely file the original notice of appeal under Rule 9006 was excusable neglect. The courts failed to consider any of the factors of excusable neglect so plainly described and defined by this Court in Pioneer Investment Service Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993) when deciding

that there was no excusable neglect in Petitioner's failure to timely file a notice of appeal.

In *Pioneer*, this Court considered what would be "excusable neglect" under Rule 9006, and discusses several factors that courts should consider when evaluating cases of "excusable neglect." See Id. These factors include "(1) whether granting the delay will prejudice the debtor; (2) the length of the delay and its impact on efficient court administration; (3) whether the delay was beyond the reasonable control of the person whose duty it was to perform; (4) whether the creditor acted in good faith and (5) whether clients should be penalized for their counsel's mistake or neglect." [Internal citations omitted]. See Id.

The Court further stated that "[t]he word [neglect] therefore encompasses both simple, faultless omissions to act and, more commonly, omissions caused by carelessness... [b]y empowering the courts to accept late filings 'where the failure to act was the result of excusable neglect,' Rule 9006(b)(1), Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake or carelessness, as well as by intervening circumstances beyond the party's control." See Id.

In *Pioneer*, the Court determined that the creditor's attorney's actions in missing a filing deadline was "excusable neglect" because the filing deadline was presented in such a

way as to confuse the creditors and their counsel. Id. p. 397-399.

In this case, the lower courts did not even consider the *Pioneer* factors at all when coming to the decision to deny Petitioner's motion to extend time to file an appeal late. In fact, the reasoning why the motion to reconsider was denied was not even put on the record in the District or Bankruptcy Courts. The Seventh Circuit also did not address why any of the five factors discussed in *Pioneer* did not apply to Petitioner's case. In short, the lower courts never discussed any of the five factors above nor did any court in the proceedings below state why any of these factors did or did not apply to this case.

If the lower courts did review the *Pioneer* factors, Petitioner did make a case

that his behavior was "excusable neglect." The total "delay" in this case was several days and well within the twenty days required by Bankruptcy Rule 9006, in no way prejudicing United in any way, as the bankruptcy process remains incomplete and the Bankruptcy Court continues to hear and adjudicate objections to claims. The court's administration of United's bankruptcy is not hampered by granting Petitioner leave to file a late notice of appeal.

Furthermore, United is incorrect in its assertion in the lower court that Petitioner simply failed to check the docket. Petitioner inquired about the docketing of the order, via email to Mr. Slade, and later to the court, but did not receive notice of the docketing until the tenth day after the order was docketed.

As such, this Court should grant certiorari in this matter.

II.

Review Is Warranted Because the Lower Courts Did Not Consider Whether Cause Existed to Reconsider Petitioner's Claim Under Bankruptcy Rule 9024.

The lower courts failed to adequately consider whether cause existed to reconsider Petitioner's claim in this case under Bankruptcy Rule 9024. In this case, the Bankruptcy Court, then the District Court relied on Rule 60(b)(2) when making its ruling that Petitioner did not present any new evidence. However, the court did not address whether other reasons under Rule 60 existed, mainly under Rule 60(b)(1).

If the court does not consider every element raised by Petitioner's motion to

reconsider, it is an abuse of discretion that warrants reversal under Rule 60(b). Judge Wedoff did not even consider Petitioner's arguments under Rule 60(b)(1) when denying the motion; for example, Petitioner argued that in the original motion, Petitioner argued that he was qualified under United policy, but due to mistake, inexperience or lack of sophistication with these matters and litigation, the court did not consider the argument.

The District Court stated that since Petitioner did not produce "newly discovered evidence," the appeal was not valid. Rule 60 states Petitioner must either show "excusable neglect" or "newly discovered evidence." It does not require that Petitioner meet the standard of both of these factors.

The Seventh Circuit never addressed whether Rule 9024 applies to this case. Therefore, this Court should grant certiorari in this case.

CONCLUSION

For the foregoing reasons, this court should grant certiorari in this matter.

Dated: September 22, 2009

Laurie M. Fowles, Esq.
Counsel for Petitioner
4 Cottage Street
Medway, MA 02053
(508) 572 0475
Fax (508) 533 4421
Email: lmfowles@aol.com